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IN THE

Supreme Court of the United States

October Term, 1951

No. 598

GREGORY R. MARTINI,

Petitioner,

against

UNITED STATES OF AMERICA, ROBERT W. GROVES, ROBERT W. GROVES, JR., HARRY G. STRACHAN, FRANK G. STRACHAN, F. D. M. STRACHAN, JR., JOHN MORRELL, LUCY B. TROSDAL and E. S. TROSDAL, JR., co-partners, trading as SOUTH ATLANTIC STEAMSHIP LINE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

GASPER S. FASULLO and
HERMAN E. HOBERMAN,
Proctors for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Gregory R. Martini, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit entered in the above entitled case on November 30, 1951.

Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit is reported, 192 F. (2d) 649.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Question Presented

(1) Whether it was the intention of this Honorable Court in the case of *Seas Shipping Co. Inc.* v. *Sieracki*, 66 S. Ct. 872, 328 U. S. 85, to grant to stevedores working aboard vessels a cause of action predicated on unseaworthiness and at the same time to withhold such right from other persons performing ship repairs traditionally done by seamen.

Statement

This is an appeal from an affirmance of a final decree dismissing the libel on the authority of *Guerrini* v. *United States*, 167 F. (2d) 352, 2nd Cir. 1948, holding that it was beyond the province of a Court of Appeals to interpret the meaning of the holding in the case of *Seas Shipping Co. Inc.* v. *Sieracki*, 66 S. Ct. 872, 328 U. S. 85 by the Supreme Court of the United States, so as to extend to persons employed aboard a vessel in navigation, other than seamen and stevedores, the warranty of a seaworthy vessel.

Facts

The case was tried only as against United States of America.

The action against South Atlantic Steamship Line was dismissed on petitioner's motion on the basis of the decision in the case of *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783.

On the 31st day of October, 1945, petitioner was assigned to check what repairs were required aboard the S. S. James Jackson, which was then in the navigable waters of the North River, docked at 132nd Street, New York City.

Petitioner reported to Auguste A. Bouchard, the chief engineer at his room aboard the vessel. The chief engineer

went with petitioner and Leroy Thomas Kanapaux, George Cardinal and John Skaar to the #2 hold.

The chief engineer stated that he was having trouble with water backing up into the troops' galley because water would not drain through the scupper line when the vessel was out at sea. Several hatch boards were removed at which time petitioner asked for a light and an extension ladder. The light was obtained and lowered into the hold. The chief engineer stated he did not have any ladder aboard and for Martini to use the batten boards to climb up to inspect the valve which was causing trouble.

Martini, Cardinal and Skaar descended into the hold. The chief did not, stating he was too busy.

After descending into the hold, Cardinal used a flash light while Skaar and petitioner were climbing up to ascertain the difficulties. Petitioner had been told by the chief engineer that he should examine the clapper valve by climbing the sweat battens. The petitioner did as he was instructed by the chief engineer and after climbing approximately 18 to 20 feet, one of the clips supporting the sweat batten broke as the petitioner took hold of the slip with his right hand, causing the petitioner to fall and suffer two broken legs and other serious and permanent injuries.

The need and propriety of the inspection was established by the testimony of:

(a) the petitioner, an experienced ship's inspector; Folios 84-93, 100-103;

(b) Captain Andersen, a licensed master since 1906; Folios 68-73;

(c) Skaar, the petitioner's foreman; Folios 125-130;

(d) Kanapaux, assistant marine superintendent, the respondent's witness; Folios 140-141; and in addition thereto the testimony of

(e) a disinterested witness under subpoena, Captain E. R. Downing, a United States government employee at the time of the trial; Folios 149-154.

Reasons for Granting the Writ

The decision of the Court below is discriminatory, unwarranted and unsupported by the evidence and contrary to the trend of decisions by this Honorable Court holding that the shipping community which receives the services should distribute and bear the loss resulting from injury by reason of unseaworthiness, and not any person injured aboard ship, while engaged in duties formerly performed by seamen.

The opinion of this Honorable Court in the case of *Seas Shipping Co. Inc.* v. *Sieracki, supra,* should have been liberally construed by the Court below and not given a restricted meaning so as to favor one class of employees over another, engaged in performing those duties on a ship which duties were formerly performed by seamen.

This Honorable Court has stated in the *Sieracki* case, *supra,* that the shipowner's liability for unseaworthiness is absolute and " * * * not confined to seamen who perform the ship's service under immediate hire to the owner, but extends to those who render it with his consent or by his arrangement," (328 U. S. at p. 95) and therefore it was error for the Court below to limit the word "those", exclusively to members of the crew and stevedores, so as to exclude a shore mechanic working under the direct orders and supervision of the ship's Chief Engineer.

It was error to discriminate between the rights of a seaman and a longshoreman on the one hand and the right of a business guest or invitee on the other, on the question of the duty imposed on the shipowner to provide any or all of them with a seaworthy place in which to work aboard the ship.

The Court of Appeals for the Second Circuit, in the case of *Guerrini* v. *United States*, 167 Fed. (2d) 352, expressly left open for decision by this Honorable Court the question as to whether the doctrine of the *Sieracki* case, *supra,* should be extended so as to include shore workers performing the traditional work of seamen on shipboard. The Court said at page 354, "At any rate it is proper, if such an innovation is to be made, that it should await the sanction of the Supreme Court in the exercise of its function of supplying the inadequacies of the past."

Conclusion

Martini, having been invited aboard the vessel to perform duties formerly performed by seamen, was entitled to protection from injury by reason of unseaworthy conditions.

Martini, working under the direct supervision and control of the ship's Chief Engineer aboard the vessel, was entitled to the same measure of protection as a member of the crew.

The mere fact that Martini had not signed the shipping articles or was not a longshoreman should not give the shipowner immunity from liability for damages caused by an unseaworthy condition of the vessel.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

GASPER S. FASULLO and
HERMAN E. HOBERMAN,
Proctors for Petitioner.

JACOB RASSNER,
of Counsel.